Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 26 APRIL 29, 1992 No. 18

This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The decisions, rulings, notices, and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 92–39)

SYNOPSES OF DRAWBACK DECISIONS

The following are synopses of drawback contracts approved January 31, 1992, to April 3, 1992, inclusive, pursuant to Subpart C, Part 191, Customs Regulations; and an approval under Treasury Decision 84–49.

In the synopses below are listed for each drawback contract approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the proposal was signed, the basis for determining payment, the Regional Commissioner to whom the contract was forwarded or approved by, and the date on which it was approved.

Dated: April 8, 1992
File: DRA–1–09
223794

JOHN DURANT,
Director,
Commercial Rulings Division.

(A) Company: American Cyanamid Co.
Articles: A-1846 solution (anti-oxidant)
Merchandise: 6-T butyl 2,4-xylenol
Factory: Stamford, CT
Proposal signed: June 6, 1991
Basis of claim: Used in
Contract forwarded to RC of Customs: New York, March 17, 1992

(B) Company: American Cyanamid Co.
Articles: CYANOX* 1790 (anti-oxidant)
Merchandise: 6-(T-butyl)-2, 4-dimethyl-3-chlorophenol (A-1846 solution [anti-oxidant])
Factory: Willow Island, WV
Proposal signed: June 6, 1991
Basis of claim: Used in, less valuable waste
Contract forwarded to RC of Customs: New York, March 17, 1992

(C) Company: The J. E. Baker Co.
Articles: Various refractory products for the steel and cement industries
Merchandise: Various magnesias
Factories: York, PA (2)
Proposal signed: February 4, 1992
Basis of claim: Used in
Contract forwarded to RC of Customs: Boston, March 19, 1992

(D) Company: Borden Inc.
Articles: Frozen concentrated lemon juice products; reconstituted lemon juice products
Merchandise: Frozen concentrated lemon juice
Factories: Birmingham, AL; Waterloo, NY
Proposal signed: January 29, 1992
Basis of claim: Used in
Contract issued by RC of Customs in accordance with § 191.25(b)(2): New York, February 26, 1992
Revokes: T.D. 89–11–D to cover a change in name from Borden Industrial Food Products, Inc., and a change in regional filing location from the Pacific region

(E) Company: Buckhorn Material Handling Group, Inc.
Articles: Plastic material handling products and containers
Merchandise: High density polyethylene in pellet form
Factory: Dawson Springs, KY
Proposal signed: February 6, 1992
Basis of claim: Appearing in
Contract forwarded to RC of Customs: New York, April 3, 1992

(F) Company: Crompton & Knowles Corp.
Articles: Coal tar dyestuffs; pigments; blends of dyestuffs
Merchandise: Dye intermediates, per T.D. 72–108 (3)
Factories: Gibraltar & Reading, PA; Greenville, SC; Lowell, NC; Newark & Nutley, NJ
Proposal signed: January 6, 1992
Basis of claim: Used in
Contract forwarded to RC of Customs: New York, February 18, 1992
Revokes: T.D. 91–72–E and T.D. 55580–N as amended by T.Ds. 69–246–L and 74–159–F

(G) Company: Everfresh, Inc.
Articles: Various juices and juice beverages
Merchandise: Concentrated orange juice; white grape concentrate for manufacturing
Factory: Franklin Park, IL
Proposal signed: March 3, 1992
Basis of claim: Appearing in
Contract forwarded to RC of Customs: Chicago, April 2, 1992

(H) Company: Fedders North America, Inc.
Articles: Refrigerating, heating and air-conditioning systems; subassemblies and components; room air conditioners; automotive radiators
Merchandise: Copper tubing; stainless steel sheet, strip or coil; brass sheet or coil; aluminized steel sheet, strip or coil; galvanized steel sheets in coil and cut lengths; cold rolled carbon steel, coiled and flat; hot rolled carbon steel flat sheet; aluminum sheets and coils; brass tubing; copper strip; brass strip
Factory: Effingham, IL
Proposal signed: October 19, 1990
Basis of claim: Appearing in
Contract issued by RC of Customs in accordance with § 191.25(b)(2): New York, February 26, 1992
Revokes: T.D. 80–122–L to cover a change in name from Fedders Corp., and update location of factories

(I) Company: FilmTec Corp.
Articles: Reverse osmosis filter
Merchandise: PET (SANKO #10) and PET (Hollytex #3329 substrates
Factory: Minneapolis, MN
Proposal signed: November 14, 1990
Basis of claim: Used in
Contract forwarded to RCs of Customs: Chicago & Boston, February 6, 1992

(J) Company: Fina Oil and Chemical Co.
Articles: Polypropylene homopolymer and copolymer resins
Merchandise: Propylene monomer; high yield titanium based catalyst
Factory: Deer Park, TX
Proposal signed: September 4, 1991
Basis of claim: Used in
Contract forwarded to RCs of Customs: New York & Houston, March 19, 1992
Revokes: T.D. 91–94–C

(K) Company: Georgia-Pacific Corp.
Articles: Plywood; particleboard; medium density fiberboard ((MDF)
Merchandise: Phenol/formaldehyde resin; urea/formaldehyde resin
Factories: As listed in proposal
Proposal signed: November 25, 1991
Basis of claim: Appearing in
Contract forwarded to RCs of Customs: Long Beach (San Francisco Liquidation), New Orleans & New York, March 23, 1992

(L) Company: The Goodyear Tire & Rubber Co.
Articles: Polyethylene terephthalate resins
Merchandise: Isophthalic acid
Factory: Scottsboro, AL
Proposal signed: August 13, 1991
Basis of claim: Used in
Contract forwarded to RC of Customs: New York, March 23, 1992

(M) Company: Hilton Davis Co.
Articles: Phthalo blue GS-NC; phthalo blue GS uniprint II; phthalo blue auracote NC; phthalo blue GS microspin; phthalo blue litho set; phthalo blue uniprint II
Merchandise: Copper phthalocyanine blue crude
Factory: Cincinnati, OH
Proposal signed: July 31, 1991
Basis of claim: Used in
Contract forwarded to RC of Customs: New York, March 9, 1992

(N) Company: Hilton Davis Co.
Articles: N102, N102-T, and Copikem V colorformer dyes
Merchandise: Diethyl meta amino phenol; meta cresol; para-anisidine
Factory: Cincinnati, OH
Proposal signed: May 14, 1991
Basis of claim: Used in
Contract forwarded to RC of Customs: New York, April 2, 1992

(O) Company: Hoechst Celanese Chemical Group, Inc.
Articles: Acetic acid; vinyl acetate; propyl acetate; butyl acetate; isobutyl acetate
Merchandise: Methanol; acetic acid
Factories: Bay City, Pampa, Pasadena & Sea Brook, TX
Proposal signed: November 5, 1991
Basis of claim: Used in, less valuable waste, with distribution to the products obtained in accordance with their relative values at the time of separation
Contract forwarded to RCs of Customs: Houston & New York, February 6, 1992

(P) Company: Hoechst Celanese Corp., Specialty Chemicals Group
Articles: Sodium hydrosulfite; various sodium hydrosulfite blends
Merchandise: Sulfur dioxide; sodium formate
Factories: Carlisle, SC; Bucks, AL; Kalama, WA
Proposal signed: May 3, 1991
Basis of claim: Used in
Contract forwarded to RC of Customs: New York, March 16, 1992
Revokes: T.D. 80–200–Z (Virginia Chemicals, Inc.)

(Q) Company: Hunt-Wesson, Inc.
Articles: Refined cottonseed oil
Merchandise: Off summer yellow cottonseed oil
Factories: Memphis, TN; Savannah, GA
Proposal signed: January 14, 1992
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Contract forwarded to RC of Customs: Long Beach (San Francisco Liquidation), March 10, 1992

(R) Company: Merck, Sharp & Dohme Quimica De Puerto Rico, Inc.
Articles: Methyldopa and LAAN
Merchandise: Vanillin technical; dimethylsulfoxide technical – bulk; virgin DLAAN – bulk
Factories: Barceloneta, PR; West Point, PA
Proposal signed: September 26, 1991
Basis of claim: Used in
Contract forwarded to RC of Customs: New York, February 21, 1992

(S) Company: Monsanto Co.
Articles: Sulfuric acid catalysts
Merchandise: Vanadium pentoxide powder
Factory: Martinez, CA
Proposal signed: December 16, 1991
Basis of claim: Appearing in
Contract forwarded to RC of Customs: Chicago, February 18, 1992

(T) Company: Oneup Enterprises, Inc.
Articles: Wool top
Merchandise: Shorn greasy wool; pulled greasy wool; scoured wool
Factories: at its agents operating under T.Ds. 55027(2) and/or 55207(1)
Proposal signed: October 10, 1991
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Contract forwarded to RC of Customs: New Orleans, January 31, 1992

(U) Company: Pacific Northern Oil Corp.
Articles: Bunker fuel oils; marine diesel oil
Merchandise: Residual oil
Factory: Long Beach, CA
Proposal signed: September 30, 1991
Basis of claim: Used in
Contract forwarded to RC of Customs: Long Beach, January 31, 1992

(V) Company: Philip Morris Inc.
Articles: Liquid flavorings; cigarettes; cut filler tobacco
Merchandise: Menthol
Factories: Louisville, KY (3); Concord, NC; Richmond, VA; Chester, VA
Proposal signed: October 18, 1991
Basis of claim: Appearing in, as to liquid flavorings; Used in, as to cigarettes and cut filler tobacco
Contract forwarded to RC of Customs: New York, March 19, 1992

(W) Company: Reynolds Metals Co.
Articles: Calcined petroleum coke; green and baked carbon anodes
Merchandise: Green petroleum coke
Factories: Lake Charles & Baton Rouge, LA
Proposal signed: October 1, 1991
Basis of claim: Used in
Contract forwarded to RC of Customs: Chicago, March 25, 1992

(X) Company: L. B. Russell Chemicals Inc.
Articles: Photographic developers; bleaches; bleach-fixes; fixers; stabilizers
Merchandise: Ferric ammonium EDTA; benzyl alcohol; tinopal (blankophor); hydroxylamine sulfate; dissolvine Z; dissolvine DZ; color developers 3 (CD–3) and 4 (CD–4)
Factories: Long Island City & Bronx, NY
Proposal signed: February 20, 1991
Basis of claim: Used in
Contract forwarded to RC of Customs: New York, April 3, 1992

(Y) Company: SandozCrop Protection Corp.
Articles: Fluvalinate and formulations thereof
Merchandise: 3,4–dichlorobenzotrifluoride; potassium fluoride; D–valine
Factories: East Palo Alto, CA; Beaumont, TX
Proposal signed: May 23, 1991
Basis of claim: Used in
Contract forwarded to RC of Customs: Chicago, March 11, 1992

(Z) Company: Teepak, Inc.
Articles: Finished cellulose sausage casings
Merchandise: Semi-finished sausage casings
Factories: Danville, IL; Atlanta, GA; Riverside & Kansas City, MO; Summerville, SC
Proposal signed: April 22, 1991
Basis of claim: Appearing in
Contract forwarded to RC of Customs: New York, February 20, 1992
Revokes: T.D. 81–123–X

APPROVAL UNDER T.D. 84–49

(1) Company: CITGO Petroleum Corp.
Articles: Petroleum products
Merchandise: Crude petroleum and derivatives
Factories: Lake Charles, LA: Cicero, IL; & agent factories
Proposal signed: December 17, 1991
Basis of claim: As provided in T.D. 84–49
Contract forwarded to RC of Customs: Houston, March 31, 1992
Revokes: T.D. 89–23–4

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19 CFR Part 4

(T.D. 92–40)

VESSELS IN FOREIGN AND DOMESTIC TRADES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to include Luxembourg in the lists of nations which permit vessels of the United States to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports. This amendment will provide reciprocal privileges for vessels of Luxembourg registry.

Customs has been furnished with satisfactory evidence that Luxembourg places no restrictions on the transportation of certain specified articles by vessels of the U.S. between ports in that country.

EFFECTIVE DATES: The reciprocal privileges for vessels registered in Luxembourg became effective on January 1, 1991, the date when the Luxembourg shipping register became operative. This amendment is effective April 15, 1992.

FOR FURTHER INFORMATION CONTACT: Monika L. Rice, Carrier Rulings Branch (202–566–5706).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except

in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the 6th proviso of the Act, as amended, provides, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that if a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the U.S. will not apply to its vessels.

In accordance with the Act, the Customs Service has listed in Section 4.93(b)(1) of the Customs Regulations (19 CFR 4.93(b)(1)) those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Those nations found to grant reciprocal privileges to vessels of the United States for the transportation of equipment for use with cargo vans, lift vans, and shipping tanks; empty barges specifically designed for carriage aboard a vessel; empty instruments of international traffic; and certain stevedoring equipment and material, are listed in section 4.93(b)(2) of the Customs Regulations (19 CFR 4.93(b)((2)).

By letter dated May 29, 1991, from the Embassy of Luxembourg, the Department of State advised that Luxembourg places no restrictions on the transportation of the articles listed in the Act by vessels of the United States between ports in Luxembourg.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

FINDING

On the basis of the information received from the Department of State, Luxembourg places no restrictions on the transportation of the articles specified in section 27 of the Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883), by vessels of the United States. Therefore, appropriate reciprocal privileges are accorded to vessels of Luxembourg registry as of January 1, 1991.

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

INAPPLICABILITY OF THE REGULATORY FLEXIBILITY ACT

This document is not subject to the provisions of the Regulatory Flexibility Act 5 U.S.C. 601 *et. seq*. That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et. seq*.) or any other statute.

EXECUTIVE ORDER 12291

This amendment does not meet the criteria for a major rule as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

DRAFTING INFORMATION

The principal author of this document was Joseph W. Clark, Regulations and Disclosure Law Branch, U.S. Customs Service; however, personnel from other offices of the Customs Service participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 4

Customs duties and inspection, Cargo vessels, Coastwise trade, Maritime carriers, Vessels.

AMENDMENT TO THE CUSTOMS REGULATIONS

To reflect the reciprocal privileges granted to vessels registered in Luxembourg, Part 4, Customs Regulations (19 CFR Part 4), is amended as follows:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, 46 U.S.C. App. 3;

* * * * * * *

Section 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. App. 883;

* * * * * * *

2. Sections 4.93(b)(1) and (2) are amended by adding "Luxembourg" alphabetically in the lists of countries under those sections.

Dated: April 9, 1992.

KATHRYN C. PETERSON,
Chief,
Regulations and Disclosure Law Branch.

[Published in the Federal Register, April 15, 1992 (57 FR 13018)]

(T.D. 92–41)

REVOCATION OF BUREAU VERITAS TO GAUGE IMPORTED PETROLEUM AND PETROLEUM PRODUCTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of approval of a commercial gauger.

SUMMARY: Pursuant to Section 151.43 (b), Customs Regulations (19 CFR 151.43 (b)), Bureau Veritas, located at 1250 Broadway–30th Floor,

New York 10001, had been approved to gauge imported petroleum and petroleum products, organic chemicals in bulk or liquid form, and vegetables oils. Bureau Veritas has recently requested that Customs revoke their approval.

Accordingly, the approval of Bureau Veritas to gauge imported petroleum and petroleum products, organic chemicals in bulk or liquid form, and vegetable oils in all Customs districts is revoked without prejudice.

EFFECTIVE DATE: April 7, 1992.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave. NW, Washington, D.C. 20229 (202–566–2446).

Dated: April 13, 1992.

JOHN B. O'LOUGHLIN,
Director,
Office of Laboratories and Scientific Services.

[Published in the Federal Register, April 16, 1992 (57 FR 13409)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

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Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
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Decisions of the United States Court of International Trade

(Slip Op. 92–43)

FEDERAL-MOGUL CORP., PLAINTIFF, TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, SKF USA INC. AND SKF (U.K.) LTD., DEFENDANT-INTERVENOR

Court No. 91–07–00528

RHP BEARINGS, ET AL., PLAINTIFF *v.* UNITED STATES, DEFENDANT, TORRINGTON CO.; FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00560

TORRINGTON CO., PLAINTIFF, FEDERAL-MOGUL CORP., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, SKF USA INC. AND SKF (U.K.) LTD., DEFENDANT-INTERVENOR

Court No. 91–08–00570

Defendant moves pursuant to Rule 42(a) of the Rules of this Court to consolidate Court Nos. 91–07–00528, 91–08–00560 and 91–08–00570 under the name *Federal-Mogul Corporation v. United States*, Consol. Court No. 91–07–00528.

Held: The majority of questions of fact and law at issue in these cases are not identical. The Court believes that judicial economy will best be served by not consolidating these cases.

[Defendant's motion for consolidation is denied.]

(Dated March 31, 1992)

Frederick L. Ikenson, P.C. (*Frederick L. Ikenson, J. Eric Nissley, Joseph A. Perna, V* and *Larry Hampel*) for plaintiff, plaintiff-intervenor and defendant-intervenor Federal-Mogul Corporation.

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., William A. Fennell, Wesley K. Caine, Christopher J. Callahan, Myron A. Brilliant, Geert De Prest, Margaret E.O. Edozien, Robert A. Weaver* and *Amy S. Dwyer*) for plaintiff, plaintiff-intervenor and defendant-intervenor The Torrington Company.

Covington & Burling (*Harvey M. Applebaum, David R. Grace* and *Thomas O. Barnett*) for plaintiff RHP Bearings, *et al.*

Stuart M. Gerson, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Velta A. Melnbrencis* and *Jane E. Meehan*); of counsel: *Dean A. Pinkert*, Attorney-Advisor, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Howrey & Simon (*Herbert C. Shelley, Scott A. Scheele, Alice A. Kipel* and *Thomas Trendl*) for defendant-intervenor SKF USA Inc. and SRF (U.K.) Limited.

OPINION AND ORDER

TSOUCALAS, *Judge:* Defendant has moved to consolidate Court Nos. 91–07–00528, 91–08–00560 and 91–08–00570 under the name of *Federal-Mogul Corporation v. United States*, Consol. Court No. 91–07–00528.

The Torrington Company ("Torrington") opposes the motion insofar as it would consolidate Court No. 91–08–00570, where Torrington is plaintiff, with the other cases at issue here. No other parties have responded to defendant's motion.

Defendant's motion is filed under Rule 42(a) of this Court which states:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated under a consolidated complaint; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The rule gives the court broad discretion to grant or deny consolidation. *Manuli, USA, Inc. v. United States*, 11 CIT 272, 277, 659 F. Supp. 244, 247 (1987).

The three cases which defendant seeks to consolidate challenge the final determination of the Department of Commerce, International Trade Administration's ("ITA") calculation of dumping margins in the first administrative review of the antidumping duty order covering antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 56 Fed. Reg. 31,769 (1991).

Defendant argues that since the same administrative record and final determination are at issue in these cases, consolidation would promote judicial efficiency. Also, defendant argues that consolidation will allow timely and final resolution of all issues in each of these cases in order to determine the final dumping margins to be applied and provide ultimate relief to all parties.

Torrington opposes consolidation of Court No. 91–08–00570 because it believes that there has been no showing by defendant of common issues of law or fact in these cases, no showing that defendant would be insured by denial of consolidation, and because consolidation would inconvenience Torrington because its interests conflict with plaintiff RHP Bearings, *et al.* ("RHP") in Court No. 91–07–00560.

Although the cases are clearly related, they are distinct. Of the eleven issues raised by plaintiff Federal-Mogul and the nine issues raised by plaintiff Torrington, two can be considered identical. Plaintiff RHP's case challenges two clerical errors made by ITA upon which ITA has asked for a remand.

The large number of issues which are not common to all the cases weigh against consolidation of these cases. *Zenith Elecs. Corp. v. United States*, 15 CIT ____, ____, Slip Op. 91–98 (Nov. 14, 1991) at 5. In addition, there has been no showing that denying consolidation would injure defendant. However, consolidation could prejudice plaintiffs Federal-Mogul and Torrington's cases by making them both a plaintiff and a defendant in the consolidated case. This is a situation generally to be avoided. *Atkinson v. Roth*, 297 F.2d 570, 575 (3rd Cir. 1961). Therefore, defendant's motion to consolidate these cases is denied.

(Slip Op. 92–44)

FEDERAL-MOGUL CORP., PLAINTIFF, TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, SKF USA INC. AND SKF SVERIGE AB, DEFENDANT-INTERVENOR

Court No. 91–07–00529

TORRINGTON CO., PLAINTIFF, FEDERAL-MOGUL CORP., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, SKF USA INC. AND SKF SVERIGE AB, DEFENDANT-INTERVENOR

Court No. 91–08–00566

Defendant moves pursuant to Rule 42(a) of the Rules of this Court to consolidate Court Nos. 91–07–00529 and 91–08–00566 under the name *Federal-Mogul Corporation v. United States*, Consol. Court No. 91–07–00529.

Held: The majority of questions of law and fact at issue in these cases are not identical. The Court believes that judicial economy will best be served by not consolidating these cases.

[Defendant's motion for consolidation is denied.]

(Dated March 31, 1992)

Frederick L. Ikenson, P.C. (*Frederick L. Ikenson, J. Eric Nissley, Joseph A. Perna, V* and *Larry Hampel*) for plaintiff and plaintiff-intervenor Federal-Mogul Corporation.

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., Wesley K. Caine, Christopher J. Callahan, Geert De Prest, Margaret E.O. Edozien, Robert A. Weaver, Jimmy V. Reyna* and *Amy S. Dwyer*) for plaintiff and plaintiff-intervenor The Torrington Company.

Stuart M. Gerson, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Velta A. Melnbrencis* and *Jane E. Meehan*); of counsel: *Dean A. Pinkert*, Attorney-Advisor, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Howrey & Simon (*Herbert C. Shelley, Scott A. Scheele, Alice A. Kipel* and *Thomas Trendl*) for defendant-intervenor SKF USA Inc. and SKF SVERIGE AB.

OPINION AND ORDER

TSOUCALAS, *Judge:* Defendant has moved to consolidate Court Nos. 91–07–00529 and 91–08–00566 under the name of *Federal-Mogul Corporation v. United States*, Consol. Court No. 91–07–00529.

The Torrington Company ("Torrington") opposes the motion. No other parties have responded to defendant's motion.

Defendant's motion is filed under Rule 42(a) of this Court which states:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated under a consolidated complaint; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The rule gives the court broad discretion to grant or deny consolidation. *Manuli, USA, Inc. v. United States*, 11 CIT 272, 277, 659 F. Supp. 244, 247 (1987).

The two cases which defendant seeks to consolidate challenge the final determination of the Department of Commerce, International Trade Administration's calculation of dumping margins in the first administrative review of the antidumping duty order covering antifriction bearings (other than tapered roller bearings) and parts thereof from Sweden. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Sweden; Final Results of Antidumping Duty Administrative Reviews*, 56 Fed. Reg. 31,762 (1991).

Defendant argues that since the same administrative record and final determination are at issue in these cases, consolidation would promote judicial efficiency. Also, defendant argues that consolidation will allow timely and final resolution of all issues in each of these cases in order to determine the final dumping margins to be applied and provide ultimate relief to all parties.

Torrington opposes consolidation because it believes that there has been no showing by defendant of common issues of law or fact in these cases or that defendant would be injured by denial of consolidation.

Although the cases are clearly related, they are distinct. Of the eleven issues raised by plaintiff Federal-Mogul and the eight issues raised by plaintiff Torrington, two can be considered identical.

The large number of issues which are not common to both cases weigh against consolidation of these cases. *Zenith Elecs. Corp. v. United States*, 15 CIT ____, ____, Slip Op. 91–98 (Nov. 14, 1991) at 5. In addition, there has been no showing that denying consolidation would injure defendant. Therefore, defendant's motion to consolidate these cases is denied.

(Slip Op. 92–45)

FEDERAL-MOGUL CORP., PLAINTIFF, TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, NTN BEARING CORP. OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORP. AND NTN CORP.; KOYO SEIKO CO., LTD. AND KOYO CORP. OF U.S.A.; PEER BEARING CO.; NSK LTD. AND NSK CORP., DEFENDANT-INTERVENORS

Court No. 91–07–00530

NIPPON PILLOW BLOCK SALES CO., LTD. AND FYH BEARING UNITS USA, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT, TORRINGTON CO.; FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00555

TORRINGTON CO., PLAINTIFF, FEDERAL-MOGUL CORP., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, NSK LTD. AND NSK CORP.; NTN BEARING CORP. OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORP. AND NTN CORP.; CATERPILLAR INC.; KOYO SEIKO CO., LTD. AND KOYO CORP. OF U.S.A.; MINEBEA CO., LTD. AND NMB CORP.; PEER BEARING CO., DEFENDANT-INTERVENORS

Court No. 91–08–00569

NTN BEARING CORP. OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORP. AND NTN CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT, TORRINGTON CO.; FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00577

NSK LTD. AND NSK CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT, TORRINGTON CO.; FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00578

PEER BEARING CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT, TORRINGTON CO.; FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00580

GENERAL ELECTRIC CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT, TORRINGTON CO.; FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00588

KOYO SEIKO CO., LTD. AND KOYO CORP. OF U.S.A., PLAINTIFF *v.* UNITED STATES AND U.S. DEPARTMENT OF COMMERCE, DEFENDANT, TORRINGTON CO.; FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00591

NACHI-FUJIKOSHI CORP. AND NACHI AMERICA, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT, TORRINGTON CO.; FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00595

Defendant moves pursuant to Rule 42(a) of the Rules of this Court to consolidate Court Nos. 91–07–00530, 91–08–00555, 91–0800569, 91–08–00577, 91–08–00578, 91–08–00580, 91–08–00588, 91–08–00591 and 91–08–00595 under the name *Federal-Mogul Corporation v. United States*, Consol. Court No. 91–07–00530.

Held: The majority of questions of law and fact at issue in these cases are not identical. The Court believes that judicial economy will best be served by not consolidating these cases.

[Defendant's motion for consolidation is denied.]

(Dated March 31, 1992)

Frederick L. Ikenson, P.C. (*Frederick L. Ikenson, J. Eric Nissley, Joseph A. Perna, V* and *Larry Hampel*) for plaintiff, plaintiff-intervenor and defendant-intervenor Federal-Mogul Corporation.

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., Wesley K. Caine, Christopher J. Callahan, Geert De Prest, Maraaret E. O. Edozien, John M. Breen, Lane S. Hurewitz* and *Amy S. Dwyer*) for plaintiff, plaintiff-intervenor and defendant-intervenor The Torrington Company.

Tanaka Ritger & Middleton (*H. William Tanaka* and *John J. Kenkel*) for plaintiff Nippon Pillow Block Sales Co., Ltd. and FYH Bearing Units USA, Inc.

Barnes, Richardson & Colburn (*Robert E. Burke, Donald J. Unger, Kazumune V. Kano* and *Diane A. MacDonald*) for plaintiff and defendant-intervenor NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corp. and NTN Corporation.

Coudert Brothers (*Robert A. Lipstein, Matthew P. Jaffe* and *Nathan V. Holt*) for plaintiff and defendant-intervenor NSK Ltd. and NSK Corporation.

Venable, Baetier, Howard & Civiletti (*John M. Gurley, John C. Dibble* and *Lindsay B. Meyer*) for plaintiff and defendant-intervenor Peer Bearing Company.

McKenna & Cuneo (*Peter Buck Feller* and *Lawrence J. Bogard*) for plaintiff General Electric Company.

Powell, Goldstein, Frazer & Murphy (*Peter O. Suchman, Neil R. Ellis, Susan E. Silver, Niall P. Meaaher* and *T. George Davis, Jr.*) for plaintiff and defendant-intervenor Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A.

O'Melveny & Myers (*Greyson L. Bryan, Erwin P. Eichmann, Greta L. H. Lichtenbaum* and *Bruce R. Hirsh*) for plaintiff Nachi-Fujikoshi Corporation and Nachi America, Inc.

Stuart M. Gerson, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Velta A. Melnbrencis* and *Jane E. Meehan*); of counsel: *Dean A. Pinkert, Stephen J. Claeys* and *Craig R. Giesze*, Attorney-Advisors, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Powell, Goldstein, Frazer & Murphy (*Richard M. Belanger* and *Neil R. Ellis*) for defendant-intervenor Caterpillar Inc.

Tanaka Ritger & Middleton (*H. William Tanaka, Michele N. Tanaka* and *Michael J. Brown*) for defendant-intervenor Minebea Co., Ltd. and NMB Corporation.

OPINION AND ORDER

TSOUCALAS, *Judge:* Defendant has moved to consolidate Court Nos. 91–07–00530, 91–08–00555, 91–08–00569, 91–08–00577, 91–08–00578, 91–08–00580, 91–08–00588, 91–08–00591 and 91–08–00595 under the name *Federal–Mogul Corporation v. United States*, Consol. Court No. 91–07–00530.

The Torrington Company ("Torrington") opposes the motion insofar as it would consolidate Court No. 91–08–00569, where Torrington is the plaintiff, with the other cases at issue here. NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation and NTN Corporation (collectively "NTN") takes no position in regard to the consolidation of these cases. No other parties have responded to defendant's motion.

Defendant's motion is filed under Rule 42(a) of this Court which states:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated under a consolidated complaint; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The rule gives the court broad discretion to grant or deny consolidation. *Manuli, USA, Inc. v. United States*, 11 CIT 272, 277, 659 F. Supp. 244, 247 (1987).

The nine cases which defendant seeks to consolidate challenge the final determination of the Department of Commerce, International Trade Administration's calculation of dumping margins in the first administrative review of the antidumping duty order covering antifriction bearings (other than tapered roller bearings) and parts thereof from Japan. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Final Results of Antidumping Duty Administrative Reviews*, 56 Fed. Reg. 31,754 (1991).

Defendant argues that since the same administrative record and final determination are at issue in these cases, consolidation would promote judicial efficiency. Also, defendant argues that consolidation will allow timely and final resolution of all issues in each of these cases in order to determine the final dumping margins to be applied and provide ultimate relief to all parties.

Torrington opposes consolidation of Court No. 91–08–00569 because it believes that there has been no showing by defendant of common issues of law or fact in these cases, no showing that defendant would be injured by denial of consolidation, and because consolidation would inconvenience Torrington because its interests conflict with plaintiffs NTN, Nippon Pillow Block Sales Co., Ltd. and FYH Bearing Units USA, Inc., NSK Ltd. and NSK Corporation ("NSK"), Peer Bearing Company ("Peer"), General Electric Company ("G.E."), Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. ("Koyo") and Nachi-Fujikoshi Corporation and Nachi America, Inc. ("Nachi") in Court Nos. 91–08–00555, 91–08–00577, 91–08–00578, 91–08–00580, 91–08–00588, 91–08–00591 and 91–08–00595.

Although the cases are clearly related, they are distinct. Of all the issues raised in the nine cases: three issues are similar in plaintiffs NSK, NTN and Koyo's cases; two issues are similar in plaintiffs Federal-Mogul and Torrington's cases; one issue is similar in plaintiffs NSK, NTN, Koyo and Peer's cases; one issue is similar in plaintiffs Torrington and Koyo's cases and one issue is similar in plaintiffs NTN and G.E.'s cases. Indeed, most of the cases have no issues in common.

The large number of issues which are not common to all the cases weigh against consolidation of these cases. *Zenith Elecs. Corp. v. United States*, 15 CIT ____, ____, Slip Op. 91–98 (Nov. 14, 1991) at 5. In addi-

tion, there has been no showing that denying consolidation would injure defendant. However, consolidation could prejudice the cases of various plaintiffs by making them both a plaintiff and a defendant in the consolidated case. This is a situation generally to be avoided. *Atkinson v. Roth*, 297 F.2d 570, 575 (3rd Cir. 1961). Therefore, defendant's motion to consolidate these cases is denied.

(Slip Op. 92–46)

FEDERAL-MOGUL CORP., PLAINTIFF, TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, SKF USA INC. AND SKF FRANCE, S.A.; SNR ROULEMENTS AND SNR BEARINGS, USA, INC.; AEROSPATIALE DIVISION HELICOPTERES AND AEROSPATIALE HELICOPTER CORP., DEFENDANT-INTERVENORS

Court No. 91–07–00531

TORRINGTON CO., PLAINTIFF, FEDERAL-MOGUL CORP., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, SKF USA INC. AND SKF FRANCE, S.A.; AEROSPATIALE DIVISION HELICOPTERES AND AEROSPATIALE HELICOPTER CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00562

ALLIED-SIGNAL AEROSPACE CO., GARRETT ENGINE DIVISION AND GARRETT AUXILIARY POWER DIVISION, PLAINTIFF *v.* UNITED STATES, DEFENDANT, TORRINGTON CO.; FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00571

Defendant moves pursuant to Rule 42(a) of the Rules of this Court to consolidate Court Nos. 91–07–00531, 91–08–00562 and 91–08–00571 under the name *Federal-Mogul Corporation v. United States*, Consol. Court No. 91–07–00531.

Held: The majority of questions of law and fact at issue in these cases are not identical. The Court believes that judicial economy will best be served by not consolidating these cases.

[Defendant's motion for consolidation is denied.]

(Dated March 31 , 1992)

Frederick L. Ikenson, P.C. (*Frederick L. Ikenson, J. Eric Nissley, Joseph A. Perna, V* and *Larry Hampel*) for plaintiff, plaintiff-intervenor and defendant-intervenor Federal-Mogul Corporation.

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., William A. Fennell, Wesley K. Caine, Christopher J. Callahan, Myron A. Brilliant, Geert De Prest, Margaret E.O. Edozien, Robert A. Weaver* and *Amy S. Dwyer*) for plaintiff, plaintiff-intervenor and defendant-intervenor The Torrington Company.

Adduci, Mastriani, Meeks & Schill (*Louis S. Mastriani, Barbara A. Murphy, Gregory C. Anthes* and *Ralph H. Sheppard*) for plaintiff Allied-Signal Aerospace Company, Garrett Engine Division and Garrett Auxiliary Power Division.

Stuart M. Gerson, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Velta A. Melnbrencis* and

Jane E. Meehan); of counsel: *Dean A. Pinkert, Stephen J. Claeys* and *D. Michael Kaye*, Attorney-Advisors, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Howrey & Simon (*Herbert C. Shelley, Scott A. Scheele, Alice A. Kipel* and *Thomas Trendl*) for defendant-intervenor SKF USA Inc. and SKF FRANCE, S.A.

Rogers & Wells (*William Silverman* and *Ryan Trainer*) for defendant-intervenor Aerospatiale Division Helicopteres and Aerospatiale Helicopter Corporation.

Donovan, Leisure, Newton & Irvine (*Pierre F. de Ravel d'Esclapon, David S. Versfelt* and *Christopher K. Tahbaz*) for defendant-intervenor SNR Roulements and SNR Bearings, USA, Inc.

OPINION AND ORDER

TSOUCALAS, *Judge:* Defendant has moved to consolidate Court Nos. 91–07–00531, 91–08–00562 and 91–08–00571 under the name of *Federal-Mogul Corporation v. United States*, Consol. Court No. 91–07–00531.

The Torrington Company ("Torrington") opposes the motion insofar as it would consolidate Court No. 91–08–00562, where Torrington is plaintiff, with the other cases at issue here. Plaintiff Allied-Signal Aerospace Company, Garrett Engine Division and Garrett Auxiliary Power Division (collectively "Allied-Signal") also opposes consolidation. No other parties have responded to defendant's motion.

Defendant's motion is filed under Rule 42(a) of this Court which states:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated under a consolidated complaint; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The rule gives the court broad discretion to grant or deny consolidation. *Manuli, USA, Inc. v. United States*, 11 CIT 272, 277, 659 F. Supp. 244, 247 (1987).

The three cases which defendant seeks to consolidate challenge the final determination of the Department of Commerce, International Trade Administration's ("ITA") calculation of dumping margins in the first administrative review of the antidumping duty order covering antifriction bearings (other than tapered roller bearings) and parts thereof from France. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; Final Results of Antidumping Duty Administrative Reviews*, 56 Fed. Reg. 31,748 (1991).

Defendant argues that since the same administrative record and final determination are at issue in these cases, consolidation would promote judicial efficiency. Also, defendant argues that consolidation will allow timely and final resolution of all issues in each of these cases in order to determine the final dumping margins to be applied and provide ultimate relief to all parties.

Torrington opposes consolidation of Court No. 91–08–00562 because it believes that there has been no showing by defendant of common issues of law or fact in these cases, no showing that defendant would be

injured by denial of consolidation, and because consolidation would inconvenience Torrington because its interests conflict with plaintiff Allied-Signal in Court No. 91–07–00571.

Allied-Signal opposes consolidation of Court No. 91–08–00571 because its case deals solely with ITA's use of best information available with respect to exports of antifriction bearings from plaintiff's French supplier. Allied-Signal points out that there are no issues in common, much less identical, between their case and the other cases at issue here.

Although the cases are clearly related, they are distinct. Of the eleven issues raised by plaintiff Federal-Mogul and the eleven issues raised by plaintiff Torrington, two can be considered identical. Plaintiff Allied-Signal's case presents no common issues of law or fact with the other cases.

The large number of issues which are not common to all the cases weigh against consolidation of these cases. *Zenith Elecs. Corp. v. United States*, 15 CIT ____, ____, Slip Op. 91–98 (Nov. 14, 1991) at 5. In addition, there has been no showing that denying consolidation would injure defendant. However, consolidation could prejudice plaintiffs Federal-Mogul and Torrington's cases by making them both a plaintiff and a defendant in the consolidated case. This is a situation generally to be avoided. *Atkinson v. Roth*, 297 F.2d 570, 575 (3rd Cir. 1961). There is no basis for consolidation of Allied-Signal's case since no common issues of law or fact exist. Therefore, defendant's motion to consolidate these cases is denied.

(Slip Op. 92–47)

FEDERAL-MOGUL CORP., PLAINTIFF, TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, SKF USA INC. AND SKF INDUSTRIE, S.P.A.; FAG CUSCINETTI S.P.A., DEFENDANT-INTERVENORS

Court No. 91–07–00532

TORRINGTON CO., PLAINTIFF, FEDERAL-MOGUL CORP., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, SKF USA INC. AND SKF INDUSTRIE, S.P.A.; FAG CUSCINETTI S.P.A., DEFENDANT-INTERVENORS

Court No. 91–08–00568

Defendant moves pursuant to Rule 42(a) of the Rules of this Court to consolidate Court Nos. 91–07–00532 and 91–08–00568 under the name *Federal-Mogul Corporation v. United States*, Consol. Court No. 91–07–00532.

Held: The majority of questions of law and fact at issue in these cases are not identical. The Court believes that judicial economy will best be served by not consolidating these cases.

[Defendant's motion for consolidation is denied.]

(Dated March 31, 1992)

Frederick L. Ikenson, P.C. (*Frederick L. Ikenson, J. Eric Nissley, Joseph A. Perna, V* and *Larry Hampel*) for plaintiff and plaintiff-intervenor Federal-Mogul Corporation.

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., Wesley K. Caine, Christopher J. Callahan, Geert De Prest, Margaret E.O. Edozien, Robert A. Weaver, Myron A. Brilliant* and *Amy S. Dwyer*) for plaintiff and plaintiff-intervenor The Torrington Company.

Stuart M. Gerson, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Velta A. Melnbrencis* and *Jane E. Meehan*); of counsel: *Dean A. Pinkert, Stephen J. Claeys, Douglas S. Cohen* and *D. Michael Kaye*, Attorney-Advisors, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Howrey & Simon (*Herbert C. Shelley, Scott A. Scheele, Alice A. Kipel* and *Thomas Trendl*) for defendant-intervenor SKF USA Inc. and SKF Industrie, S.p.A.

Grunfeld, Desiderio, Lebowitz & Silverman (*Max F. Schutzman, David L. Simon* and *Andrew B. Schroth*) for defendant-intervenor FAG Cuscinetti SpA.

Opinion and Order

Tsoucalas, *Judge:* Defendant has moved to consolidate Court Nos. 91–07–00532 and 91–08–00568 under the name of *Federal-Mogul Corporation v. United States*, Consol. Court No. 91–07–00532.

The Torrington Company ("Torrington") opposes the motion. No other parties have responded to defendant's motion.

Defendant's motion is filed under Rule 42(a) of this Court which states:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated under a consolidated complaint; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The rule gives the court broad discretion to grant or deny consolidation. *Manuli, USA, Inc. v. United States*, 11 CIT 272, 277, 659 F. Supp. 244, 247 (1987).

The two cases which defendant seeks to consolidate challenge the final determination of the Department of Commerce, International Trade Administration's calculation of dumping margins in the first administrative review of the antidumping duty order covering antifriction bearings (other than tapered roller bearings) and parts thereof from Italy. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Final Results of Antidumping Duty Administrative Reviews*, 56 Fed. Reg. 31,751 (1991).

Defendant argues that since the same administrative record and final determination are at issue in these cases, consolidation would promote judicial efficiency. Also, defendant argues-that consolidation will allow timely and final resolution of all issues in each of these cases in order to determine the final dumping margins to be applied and provide ultimate relief to all parties.

Torrington opposes consolidation because it believes that there has been no showing by defendant of common issues of law or fact in these cases, or that defendant would be injured by denial of consolidation.

Although the cases are clearly related, they are distinct. Of the eleven issues raised by plaintiff Federal-Mogul and the eight issues raised by plaintiff Torrington, two can be considered identical.

The large number of issues which are not common to all the cases weigh against consolidation of these cases. *Zenith Elecs. Corp. v. United States*, 15 CIT ____, ____, Slip Op. 91–98 (Nov. 14, 1991) at 5. In addition, there has been no showing that denying consolidation would injure defendant. Therefore, defendant's motion to consolidate these cases is denied.

(Slip Op. 92–48)

FEDERAL-MOGUL CORP., PLAINTIFF, TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, SKF USA INC. AND SKF GMBH; GMN GEORG MULLER NURNBERG AG; INA WALZLAGER SCHAEFFLER KG AND INA BEARING CO., INC.; NTN BEARING CORP. OF AMERICA AND NTN KUGELLAGERFABRIK (DEUTSCHLAND) GMBH; FAG KUGELFISCHER GEORG SCHAFER KGAA; MESSERSCHMITT-BOELKOW-BLOHM, GMBH AND MBB HELICOPTER CORP., DEFENDANT-INTERVENORS

Court No. 91–07–00533

TORRINGTON CO., PLAINTIFF, FEDERAL-MOGUL CORP., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, SKF USA INC. AND SKF GMBH; GMN GEORG MULLER NURNBERG AG; NTN BEARING CORP. OF AMERICA AND NTN KUGELLAGERFABRIK (DEUTSCHLAND) GMBH; CATERPILLAR INC.; FAG KUGELFISCHER GEORG SCHAFER KGAA; INA WALZLAGER SCHAEFFLER KG AND INA BEARING CO., INC.; MESSERSCHMITT-BOELKOW-BLOHM, GMBH AND MBB HELICOPTER CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00567

NTN BEARING CORP. OF AMERICA AND NTN KUGELLAGERFABRIK (DEUTSCHLAND) GMBH, PLAINTIFF *v.* UNITED STATES AND ROBERT A. MOSBACHER, SECRETARY OF COMMERCE, DEFENDANT, TORRINGTON CO.; FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00576

GMN GEORG MULLER NURNBERG AG, PLAINTIFF *v.* UNITED STATES, DEFENDANT, TORRINGTON CO; FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00583

NEUWEG FERTIGUNG GMBH, PLAINTIFF *v.* UNITED STATES, DEFENDANT, TORRINGTON CO.; FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00587

Defendant moves pursuant to Rule 42(a) of the Rules of this Court to consolidate Court Nos. 91–07–00533, 91–08–00567, 91–08–00576, 91–08–00583 and 91–08–00587 under the name *Federal-Mogul Corporation v. United States*, Consol. Court No. 91–07–00533.

Held: The majority of questions of law and fact at issue in these cases are not identical. The Court believes that judicial economy will best be served by not consolidating these cases.

[Defendant's motion for consolidation is denied.]

(Dated March 31, 1992)

Frederick L. Ikenson, P.C. (*Frederick L. Ikenson, J. Eric Nissley, Joseph A. Perna, V* and *Larry Hampel*) for plaintiff, plaintiff-intervenor and defendant-intervenor Federal-Mogul Corporation.

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., Wesley K. Caine, Christopher J. Callahan, Myron A. Brilliant, Geert De Prest, Margaret E.O. Edozien, Robert A. Weaver, David Scott Nance* and *Amy S. Dwyer*) for plaintiff, plaintiff-intervenor and defendant-intervenor The Torrington Company.

Covington & Burling (*Harvey M. Applebaum, David R. Grace* and *Thomas O. Barnett*) for plaintiff Neuweg Fertigung GmbH.

Barnes, Richardson & Colburn (*Robert E. Burke, Donald J. Unger, Kazumune V. Kano* and *Diane A. MacDonald*) for plaintiff and defendant-intervenor NTN Bearing Corporation of America and NTN Kugellagerfabrik (Deutschland) GmbH.

Grunfeld, Desiderio, Lebowitz & Silverman (*Bruce M. Mitchell* and *Philip S. Gallas*) for plaintiff and defendant-intervenor GMN Georg Muller Nurnberg AG.

Stuart M. Gerson, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *Velta A. Melnbrencis* and *Jane E. Meehan*); of counsel: *Dean A. Pinkert* and *Douglas S. Cohen*, Attorney-Advisors, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Howrey & Simon (*Herbert C. Shelley, Scott A. Scheele, Alice A. Kipel* and *Thomas Trendl*) for defendant-intervenors SKF USA Inc. and SKF GmbH.

Arent Fox Kintner Plotkin & Kahn (*Stephen L. Gibson*) for defendant-intervenor INA Walzlager Schaeffler KG and INA Bearing Company, Inc.

Rogers & Wells (*William Silverman* and *Ryan Trainer*) for defendant-intervenor Messerschmitt-Boelkow-Blohm, GmbH and MBB Helicopter Corporation.

Powell, Goldstein, Frazer & Murphy (*Richard M. Belanger* and *Neil R. Ellis*) for defendant-intervenor Caterpillar Inc.

Grunfeld, Desiderio, Lebowitz & Silverman (*Max F. Schutzman, David L. Simon* and *Andrew B. Schroth*) for defendant-intervenor FAG Kugelfischer Georg Schafer KGaA.

OPINION AND ORDER

TSOUCALAS, *Judge:* Defendant has moved to consolidate Court Nos. 91–07–00533, 91–08–00567, 91–08–00576, 91–08–00583 and 91–08–00587 under the name of *Federal-Mogul Corporation v. United States*, Consol. Court No. 91–07–00533.

The Torrington Company ("Torrington") opposes the motion insofar as it would consolidate Court No. 91–08–00567, where Torrington is plaintiff, with the other cases at issue here. NTN Bearing Corporation of America and NTN Kugellagerfabrik (Deutschland) GmbH ("NTN") responded but takes no position on defendant's motion. No other parties have responded to defendant's motion.

Defendant's motion is filed under Rule 42(a) of this Court which states:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated under a consolidated complaint; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The rule gives the court broad discretion to grant or deny consolidation. *Manuli, USA, Inc. v. United States*, 11 CIT 272, 277, 659 F. Supp. 244, 247 (1987).

The five cases which defendant seeks to consolidate challenge the final determination of the Department of Commerce, International Trade Administration's ("Commerce" or "ITA") calculation of dumping margins in the first administrative review of the antidumping duty order covering antifriction bearings (other than tapered roller bearings) and parts thereof from the Federal Republic of Germany. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From The Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review*, 56 Fed. Reg. 31,692 (1991).

Defendant argues that since the same administrative record and final determination are at issue in these cases, consolidation would promote judicial efficiency. Also, defendant argues that consolidation will allow timely and final resolution of all issues in each of these cases in order to determine the final dumping margins to be applied and provide ultimate relief to all parties.

Torrington opposes consolidation of Court No. 91–08–00567 because it believes that there has been no showing by defendant of common issues of law or fact in these cases, no showing that defendant would be injured by denial of consolidation, and because consolidation would inconvenience Torrington because its interests conflict with plaintiffs NTN, GMN Georg Muller Nurnberg AG ("GMN") and Neuweg Fertigung GmbH in Court Nos. 91–08–00576, 91–08–00583 and 91–08–00587.

Although the cases are clearly related, they are distinct. Of the twelve issues raised by plaintiff Federal-Mogul and the twelve issues raised by plaintiff Torrington, two can be considered identical. Plaintiffs Torrington and GMN raise one issue in common.

The large number of issues which are not common to all the cases weigh against consolidation of these cases. *Zenith Elecs. Corp. v. United States*, 15 CIT ____, ____, Slip Op. 91–98 (Nov. 14, 1991) at 5. In addi-

tion, there has been no showing that denying consolidation would injure defendant. However, consolidation could prejudice plaintiffs Federal-Mogul, Torrington, GMN and NTN's cases by making them both a plaintiff and a defendant in the consolidated case. This is a situation generally to be avoided. Atkinson v. Roth, 297 F.2d 570, 575 (3rd Cir. 1961). Therefore, defendant's motion to consolidate these cases is denied.

(Slip Op. 92–49)

TORRINGTON CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND NTN BEARING CORP. OF AMERICA, ET AL., DEFENDANT-INTERVENORS

Court No. 91–05–00355

The International Trade Commission did not abuse its discretion in relying upon questionnaire data in determining the condition of the domestic ball bearing industry. Also, the Commission did not abuse its discretion by declining to exclude related parties from its analysis of the domestic industry or by concluding there was no reasonable indication of material injury or threat thereof to the domestic industry. In addition, the Commission did not abuse its discretion by declining to cumulate imports.

[Plaintiff's Motion for Judgment on the Agency Record is denied.]

(Decided April 3, 1992)

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon. Jr., Lane S. Hurewitz, Myron A. Brilliant* and *Serena L. Wilson*) for plaintiff.

James A. Toupin, Assistant General Counsel, *Marc A. Bernstein*, Office of General Counsel, United States International Trade Commission, for defendant.

Barnes, Richardson & Colburn (*Robert E. Burke, Ronald J. Unger, Brian F. Walsh, James A. Karamanis* and *Diane A. MacDonald*) for NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, NTN Bearing Corporation of Canada and Tung Pei Industrial Co., Ltd., defendant-intervenors.

Howrey & Simon (*Herbert C. Shelley, Alice A. Kipel, Juliana M. Cofrancesco* and *Jennifer Rie*) for SKF USA, Inc., SKF Argentina S.A., SKF Steyr Ges.m.b.H., SRF do Brazil Ltda. and SRF Industrias Mexicanas, S.A. de C.V., defendant-intervenors.

Grunfeld, Desiderio, Lebowitz & Silverman (*Max F. Schutzman, David L. Simon* and *Andrew B. Schroth*) for FAG bearings Ltd., FAG Austria Walzlager, Rolamentos FAG Ltda., Sammi Precision Bearings Industries Co. and FAG Bearings Corporation, defendant-intervenors.

Venable, Baetjer, Howard & Civiletti (*John Gurlev*) for Peer Bearing company, defendant-intervenor.

Bryan, Cave, McPheeters & McRoberts (*Peter D. Ehrenhaft* and *Lizbeth R. Levinson*), for Magyar Gordulocsapagy Muvek, Impexmetal, Fabryka Lozysk Tocznych-Xielce and Fabryka Lozysk Tocznych-Xrasnik, defendant-intervenors.

Donovan, Leisure, Roaovin, Huge & Schiller (*Michael P. House, Jae Chang Lee* and *Raymond Paretzky*) for Korea Machinery Co., Ltd. and Golden Bell U.S.A. Co., defendant-intervenors.

Baker & McKenzie (*Kevin M. O'Brien*) for Emerson Power Transmission Company, defendant-intervenor.

MEMORANDUM OPINION AND ORDER

DICARLO, *Chief Judge:* Plaintiff brings this action challenging the negative preliminary determinations of injury by the U.S. International Trade Commission in the antidumping and countervailing duty investigations regarding *Ball Bearings, Mounted or Unmounted, and Parts Thereof, from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey, and Yugoslavia*, 56 Fed. Reg. 14,534 (Int'l Trade Comm'n 1991) (neg. prelim.). The Court has jurisdiction under 19 U.S.C. § 1516a(a)(1)(C) (1988) and 28 U.S.C. § 1581(c) (1988). The Court affirms the Commission's determinations and holds the Commission did not abuse its discretion: 1) in relying upon questionnaire data in determining the condition of the domestic industry; 2) by declining to exclude related parties from its consideration of the condition of domestic industry; 3) in concluding there was no reasonable indication of material injury or threat of material injury to the domestic industry; and 4) by declining to cumulate imports.

STANDARD OF REVIEW

The Commission's role in a preliminary determination is to decide, on "the best information available to it at the time," whether there is a reasonable indication that a domestic industry is being materially injured or threatened with material injury by reason of imports of the merchandise under investigation. 19 U.S.C. § 1673b(a) (1988). The Court of Appeals for the Federal Circuit has affirmed the Commission's practice of reaching a negative preliminary determination of injury only when: 1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of injury by reason of imports, and; 2) there is no likelihood that contrary evidence will arise in a final investigation. *American Lamb Co. v. United States*, 4 Fed. Cir. (T) 47, 55, 785 F.2d 994, 1001 (1986). This Court must uphold a negative preliminary injury determination of the Commission unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(A) (1988). For this purpose, the Court is to "'ascertain whether there was a rational basis in fact for the determination.'" *American Lamb*, 4 Fed. Cir. (T) at 59, 785 F.2d at 1004 (quoting S. Rep. No. 249, 96th Cong., 1st Sess. 252 (1979), *reprinted in* 1979 U.S.C.C.A.N. 381, 638).

DISCUSSION

A. *The Commission's Reliance Upon Questionnaire Data:*

The Commission determined that the industry against which it was to assess the impact of the alleged less than fair value (LTFV) imports was the industry producing ground ball bearings, mounted and unmounted, and parts thereof. *Ball Bearings, Mounted or Unmounted, and Parts Thereof, from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey and Yugoslavia*, Inv. Nos. 701–TA–307 and

731–TA–498–511, USITC Pub. 2374 at 1 n.3 (Apr. 1991)(prelim.). It sent questionnaires to 51 firms it had reason to believe produced ball bearings, or parts thereof, in the United States during the calendar years 1988–90. Id. at A–24. The Commission received usable responses from 25 producers.

The Commission concluded the questionnaire data were sufficiently complete to provide an accurate characterization of the condition of the domestic industry and that there was no likelihood that additional evidence obtained in a final investigation would produce a materially different view of the industry. *Id.* at 19. It determined that during the period of investigation factors relating to domestic consumption and production were generally positive, the market share of domestic producers remained at high levels, employment-related indicators were uniformly positive and profitability changed little, despite large annual fluctuations. *Id.* at 19–21. Also, the Commission noted that since production increased at a greater rate than consumption, inventories of complete ball bearings increased throughout the period of investigation. In addition, the Commission cited increases in prices and positive investment-related indicators as factors leading to its conclusion that the industry was in a strong condition. *Id.* at 21–22.

Plaintiff contends the Commission abused its discretion by relying upon incomplete questionnaire data. Plaintiff also complains the Commission erred in concluding the record clearly and convincingly supported a negative determination since the questionnaire data conflicted with data compiled by the Bureau of the Census. Plaintiff further asserts the Commission abused its discretion by not attempting to reconcile the conflicting data.

Plaintiff argues the Commission relied upon questionnaire data containing information from only half of the known producers of ball bearings. The Commission is required to make its preliminary determination within 45 days based upon the "best information available to it at the time." 19 U.S.C. 1673b(a); *see Atlantic Sugar, Ltd. v. United States*, 2 Fed. Cir. (T) 130, 133–34, 744 F.2d 1556, 1561 (1984) (noting the extremely short deadlines built into the antidumping law). All of the known domestic producers were surveyed. Three firms indicated they did not produce ground ball bearings or parts during the period of investigation. Other firms responded too late for their responses to be incorporated into the staff report presented to the Commission at the time of the vote in these investigations or provided data in a form that could not be incorporated into the staff report. The information provided by the 25 producers represented a substantial majority of domestic production, accounting for an estimated 74%, by quantity, of producers' total shipments of complete ground ball bearings in 1989 and for 68%, by value, of 1989 producers' total shipments of ball complete ground bearings and parts. USITC Pub. 2374 at 19 & A–24. Under these circumstances, the Commission did not abuse its discretion in deter-

mining its questionnaire data were sufficiently complete to accurately describe the condition of the domestic industry.

Plaintiff also contends the record does not clearly and convincingly support negative determination because the questionnaire data conflicted with the Bureau of the Census data contained in plaintiff's petition and post-conference submissions. Plaintiff claims the Census data show declining trends in: 1) the quantity and value of producers' total domestic shipments of complete ground ball bearings, 2) the quantity and value of producers' share of apparent domestic consumption of complete ground ball bearings, 3) the quantity of domestic production of complete ground ball bearings and parts, 4) capacity utilization and 5) the value of apparent domestic consumption of complete ground ball bearings and parts. Plaintiff states that compared to the questionnaire data, the Census data show steeper decreases in the quantity of apparent domestic consumption of complete ground ball bearings and steeper increases in market penetration, in quantity and value, by the subject imports. Plaintiff, therefore, asserts that the Commission abused its discretion in concluding additional evidence obtained in a final investigation would not produce a materially different view.

Since Census data were only available for 1988–89, they did not provide information for the entire 1988–90 period of investigation. Also, the merchandise under investigation includes only *ground* bearings, mounted or unmounted and parts. USITC Pub. 2374 at 1 n.3. The Census documents provide segregated data for ground bearings only for the quantity and value of producers' total shipments. The Bureau of the Census, U.S. Dep't of Commerce, MA35Q(99)–1, *Current Industrial Reports: Antifriction Bearings 1989*, Table 1B (Sept. 1990). The export statistics in the Census report provide only aggregate data for ground and unground bearings. *Id.* at Table 3. As a result, meaningful information concerning producers' domestic shipments, apparent domestic consumption, domestic producers' share of apparent consumption and import penetration cannot be derived from the Census data. In addition, the Census report does not provide data regarding domestic production and capacity utilization.

The Commission is required, using the best information available to it, to conduct a thorough investigation. *American Lamb*, 4 Fed. Cir. (T) at 58, 785 F.2d at 1003–04. After examining all the data submitted to and collected by the Commission, the Court finds the Commission did not abuse its discretion in determining the questionnaire data were the best information available to it for examining producers' domestic shipments, domestic production, capacity utilization, apparent domestic consumption, domestic producers' share of apparent consumption and import penetration. Since the Census data were not available for the entire period of investigation and did not provide complete data for the merchandise under investigation, they do not diminish the clear and convincing nature of the record. In requesting the Court to substitute the data contained in its petition for the questionnaire data, plaintiff re-

quests the Court to substitute its judgment for that of the Commission. The Court's role, however, is to ascertain whether the was a rational basis in fact for the determination, *American Lamb*, 4 Fed. Cir. (T) at 59, 785 F.2d at 1004; it is not the Court's function to decide that it would have made another decision on the basis of the evidence. *See Matsushita Elec. Indus. Co. v. United States*, 3 Fed. Cir. (T) 44, 54, 750 F.2d 927, 936 (1984).

Since the Commission received usable responses from nearly all of the major producers, *see* USITC Pub. 2374 at A–24, it was reasonable for the Commission to conclude that additional information obtained in a final investigation would not provide a materially different view. "The statute calls for a reasonable indication of injury, not a reasonable indication for further inquiry." *American Lamb*, 4 Fed. Cir. (T) at 55, 785 F.2d at 1001.

In addition, plaintiff contends the Commission abused its discretion by not attempting to reconcile the apparent conflict between the questionnaire data and the Census data. The Commission is presumed to have considered all of the evidence in the record. *Granges Metallverken*, 13 CIT 471, 479, 716 F. Supp. 17, 24 (1989). The fact that certain information is not discussed in a Commission determination does not establish that the Commission failed to consider that information because there is no statutory requirement that the Commission must respond to each piece of evidence presented by the parties. *Id.* at 478–79, 716 F. Supp. at 24. "A court may 'uphold [a] decision of less than ideal clarity if the agency's path may reasonably be discerned.'" *Ceramica Regiomontana, S.A. v. United States*, 5 Fed. Cir. (T) 77, 78, 810 F.2d 1137, 1139 (1987)(quoting *Bowman Transp., Inc. v. Arkansas-Best Freight Svs., Inc.*, 419 U.S. 281, 286 (1974)).

B. *The Commission's Decision not to Exclude Related Parties:*

Plaintiff contends the Commission erred by failing to exclude from its analysis of the domestic industry related parties who import or are related to exporters of the subject merchandise. *See* 19 U.S.C. § 1677(4)(B) (1988). Plaintiff argues financial indicators relevant to the condition of the domestic industry were skewed by inclusion of related parties.

The decision whether to exclude parties who import or are related to exporters of the subject merchandise from consideration of the domestic industry is within the discretion of the Commission. 19 U.S.C. § 1677(4)(B). In making this determination, the Commission examines whether there are "appropriate circumstances" for excluding the firm in question from the definition of the domestic industry. *Empire Plow Co. v. United States*, 11 CIT 847, 853, 675 F. supp. 1348, 1353 (1987). The court has upheld the commission's practice of examining such factors as: 1) the percentage of domestic production attributable to related producers; 2) the reason why importing producers choose to import the subject merchandise (whether to benefit from unfair trade practice or to enable them to continue production and compete in the domestic market), or; 3) the competitive position of the related producer vis-a-vis

other domestic producer. *Id.; Sandvik AB v. United States*, 13 CIT 738, 748–49, 721 F. Supp. 1322, 1332 (1989), *aff'd mem.*, 8 Fed. Cir. (T) ____, 904 F.2d 46 (1990).

The Commission concluded that appropriate circumstances did not exist to exclude related parties from consideration of the domestic industry. USITC Pub. 2374 at 17. The Commission noted that the ball bearing industry is global in nature and dominated by a small number of multinational companies. *Id.* Those companies, including plaintiff, operate production facilities in several countries, where production is rationalized to meet the particular needs of each country's market. *Id.* Since those companies do not find it efficient to produce all ball bearing lines in their U.S. facilities, they import ball bearings or parts from their foreign production operations. *Id.* at 16. The Commission found the related parties' importation was not undertaken principally to benefit from unfair trade practices. *Id.* The Commission also explained the related parties generally had a longstanding presence as U.S. producers, and that import volume from the subject countries was smaller than U.S. production for each of the related parties and was in most instances quite low. *Id.* at 16–17. It also noted the related parties collectively account for a substantial proportion of U.S. sales and include some of the largest domestic producers of ball bearings. The Commission determined that exclusion of the related parties could present a distorted view of the industry. *Id.* at 17. The Court finds it was reasonable for the Commission to conclude appropriate circumstances did not exist for exclusion of any of the related parties.

Plaintiff argued the related parties' production rationalization and import practices indicate they shielded their domestic operations from the effects of the imported merchandise. As a result, according to plaintiff, the related parties benefitted from unfairly traded ball bearings imported from the subject countries as well as from nine other countries already subject to an antidumping order. Nonetheless, the Commission has the discretion to make a reasonable interpretation of the facts, *see National Ass'n of Mirror Mfrs. v. United States*, 12 CIT 771, 778, 696 F. Supp. 642, 647 (1988), and the Court will not decide whether it would have made the same decision on the basis of the evidence. *Matsushita Elec. Indus.*, 3 Fed. Cir. (T) at 54, 750 F.2d at 936.

C. *Whether the Commission Properly Weighed the Evidence:*

1. Inventories:

Plaintiff claims the Commission abused its discretion in determining the domestic industry was not experiencing or threatened with material injury. Plaintiff contends increasing domestic inventories were sufficient to establish a reasonable indication that the domestic industry was experiencing or threatened with material injury.

An increase in inventories does not compel an affirmative determination. The statutes direct the Commission to investigate variety of factors in determining the condition of the domestic industry, 19 U.S.C. § 1677(7)(C)(iii), and provide "the presence or absence of any factor

* * * shall not necessarily give decisive guidance with respect to the determination: of material injury. 19 U.S.C. § 1677(7)(E)(ii) (1988). The court has stated "[n]o factor, standing alone, triggers a *per se* rule of material injury." *American Spring Wire Corp. v. United States*, 8 CIT 20, 23, 590 F. supp. 1273, 1277 (1984), *aff'd sub. nom. Armco, Inc. v. United States*, 3 Fed. Cir. (T) 123, 760 F.2d 249 (1985); *see Jeanette Sheet Glass Corp. v. United States*, 11 CIT 10, 654 F. Supp. 179 (1985) (affirming Commission's negative preliminary determination in investigation in which U.S. producers' inventories increased throughout period of investigation). The Commission determined domestic inventories increased throughout the period of investigation because production increased at a greater rate than consumption. USITC Pub. 2374 at 21. In light of the Commission's findings regarding production, shipments, consumption and import penetration, it was reasonable for the Commission to reach a negative determination despite the increase in U.S. producers inventories. Plaintiff's argument essentially goes to the weight the Commission assigned to the increase in inventories, which is within its discretion. *See National Ass'n of Mirror Mfrs.*, 12 CIT at 774, 696 F. Supp. at 644. It is not the Court's function to reweigh the evidence. *See American Lamb*, 4 Fed. Cir. (T) at 58, 785 F.2d at 1004.

2. Profitability:

Plaintiff contends that the Commission ignored substantial deterioration of profitability within the U.S. industry, arguing a large number of firms experienced net losses in 1988 and 1990. The Commission is to determine the financial performance of the industry as a whole. *Sandvik AB v. United States*, 13 CIT at 746, 721 F. Supp. at 1330. The Commission is also directed to examine a number of financial factors in determining the condition of the domestic industry. 19 U.S.C. § 1677(7)(C)(iii). The Commission reasonably determined that on an aggregate basis domestic producers showed positive operating income, net income before taxes and cash flow during the period of investigation.

Plaintiff also argues the Commission abused its discretion in concluding the domestic industry was not experiencing material injury since the industry's ratio of operating income to net sales in 1990 was lower than 1988, a year in which the Commission found in another determination that the ball bearing industry was experiencing injury. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom*, Inv. Nos. 303–TA–19–20 & 731–TA–391–399, USITC Pub. 2185 (May 1989)(final). Findings in related determinations regarding threat or material injury are generally not dispositive on subsequent determinations. *Citrosuco Paulista, S.A. v. United States*, 12 CIT 1196, 1217, 704 F. Supp. 1075, 1094 (1988). In addition, plaintiff's argument fails to consider the Commission does not and cannot determine a specific profitability level injurious because the statute directs the Commission to evaluate a number of factors in determining the condition of the domes-

tic industry. *See American Spring Wire*, 8 CIT at 23, 590–F. Supp. at 1277. In *Antifriction Bearings*, the Commission explained that a number of declining trends in addition to profitability lead to its conclusion that the ball bearing industry was experiencing material injury. USITC Pub. 2185 at 48.

The Commission has discretion to ascertain which economic factors are relevant in an investigation, and the weight to be given those factors. *See National Ass'n of Mirror Mfrs.*, 12 CIT at 774, 696 F. Supp. at 645; *Copperweld Corp. v. United States*, 12 CIT, 148, 160, 682 F. Supp. 552, 562 (1988). Since it determined other indicators such as shipments, production and employment rose during the period of investigation and that wages and investment-related indicators were also positive, the Commission did not abuse its discretion in reaching its negative determination.

3. Price Suppression:

Plaintiff contends the Commission ignored in its examination of material injury the quarterly price comparisons in the record indicating substantial underselling. The Commission, however, generally considers issues of price suppression and underselling with regard to causation of injury. *See. e.g., Heavy Forged Handtools from the Peoples Republic of China*, USITC Pub. 2284 at 23, Inv. No. 731–TA–457 (May 1990)(prelim.). Since Commissioners Lodwick and Rohr concluded on the basis of their examination of the domestic industry that there was no reasonable indication that the industry was currently experiencing material injury, they found it unnecessary to address the issue of whether imports of the subject merchandise were causing material injury. USITC Pub. 2374 at 22–23. In a separate opinion analyzing the causation of material injury, Acting Chairman Brunsdale concluded the demand for ball bearings is not very sensitive to price. *Id.* at 55–56. All three negative-voting commissioners reasonably determined, however, that domestic prices showed significant increases. *Id.* at 21 & n.73. The Commission, therefore, did not ignore how the subject imports have affected domestic prices in determining that the domestic industry was not experiencing material injury.

D. *Cumulation of Imports in Determining the Cause of Material Injury or Threat of Material Injury:*

1. The Acting Chairman's analysis of Material Injury:

In a separate opinion, the Acting Chairman examined the issue of whether imports of the subject merchandise were causing injury to the domestic industry. Pursuant to the negligible import provision, *see* 19 U.S.C. § 1677(7)(C)(v) (1988), which allows the Commission not to cumulate when imports of the subject merchandise are negligible, she declined to cumulate imports from 12 of the 14 countries. USITC Pub. 2374 at 51–53. Although she cumulated imports from Canada and Taiwan, she determined that three factors reduced their impact on the domestic industry: 1) the demand for ball bearings was not very sensitive

to changes in price; 2) the cumulated imports had low market penetration, and; 3) the domestic producers had unused production capacity. *Id.* at 54–57. Taking the condition of the industry into account, she concluded there was no reasonable indication of material injury by reason of imports from Canada and Taiwan allegedly sold at LTFV. *Id.* at 57.

Plaintiff contends the Acting Chairman misapplied the negligible import exception in declining to cumulate imports from all 14 countries. Plaintiff maintains that although the statute does not establish a cutoff, the Acting Chairman failed to cumulate bearings from countries with less than a 1% market share and that imports from each of the fourteen countries were not isolated or sporadic, each exceeding one million bearings valued at over $2 million in 1989. Plaintiff also claims Chinese ball bearings compete with domestic bearings since the record does not establish that Chinese bearings were of inferior quality.

In examining whether the subject imports are causing material injury, the Commission is not required to cumulate imports if it determines imports are negligible and have no discernable adverse impact on the domestic industry. 19 U.S.C. § 1677(7)(C)(v). The statute provides that in determining whether to cumulate imports,

> the Commission shall evaluate all relevant economic factors, including, but not limited to, whether
>
> (I) the volume and market share of the imports are negligible,
>
> (II) sales transactions involving the imports are isolated and sporadic, and
>
> (III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.

Id.

The legislative history states the statute "does not provide * * * a specific numerical standard for what constitutes 'negligible' in recognition that what may be 'negligible' imports in volume or market share for one industry may be different than for another industry," but directs the Commission to interpret the negligible import exception "in a manner that makes sense given the realities of the marketplace." H.R. Rep. No. 40, Part 1, 100th Cong., 1st Sess. 131 (1987).

The Acting Chairman noted that the individual market shares for Argentina, Brazil, Hungary, Hong Kong, Poland, Turkey and Yugoslavia never rose above .2% during the period of investigation, imports from Austria and Spain peaked at .4% and .8% in 1989 and imports from Korea, Mexico and China reached their highest import penetration levels of .5%, .6% and .8% in 1990. *See* USITC Pub. 2374 at 52. She also noted that there was general agreement that Chinese ball bearings were of inferior quality and some allegations that Eastern European ball bearings were also of low quality. *Id.* The Acting Chairman determined the market was not very sensitive to price since ball bearings make up only a small fraction of the total cost of final products. USITC Pub. 2374 at 56. She also determined that only in extraordinary circumstances could she

find that strikingly low levels of imports would result in price suppression. The Court finds it was reasonable for the Acting Chairman to conclude the small volume of imports from Argentina, Austria, Brazil, Hungary, Hong Kong, Korea, Mexico, Poland, Spain, Turkey and Yugoslavia were negligible. *See, e.g., Coated Groundwood Paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdom*, Inv. Nos. 731–TA–486–494, USITC Pub. 2359 at 33–36 (Feb. 1991)(prelim.)(In a highly price sensitive market the only countries not candidates for the negligible exception were those with more than a 2% market share.).

Although the Acting Chairman found that with the possible exception of imports from Hong Kong, Poland and Turkey, none of the imports were sporadic, this does not preclude a finding that the imports were negligible. To conclude otherwise could lead to the absurd result that a regular import flow of a small number of bearings per month would preclude a finding that the imports were negligible. *See* H.R. Rep. No. 40, Part 1, 100th Cong., 1st Sess. at 131 (cumulation provision not intended to lead to ridiculous results). Moreover, the Commission is directed to interpret the negligible import provision in a manner that makes sense in light of the market. *Id.* Annual consumption in the ball bearing industry is measured in hundreds of millions of units and even plaintiff acknowledges that imports of 4 million units may be insignificant. AR. Doc. 68 at 15 & 59.

Also, the record supports the Acting Chairman's conclusion regarding the limited fungibility of Chinese ball bearings caused by differences in quality. *See* AR. Doc. 68 at 143–144 & 166. Given the low market penetration of Chinese ball bearings, it was not an abuse of discretion for her to decline to cumulate Chinese ball bearings.

2. The Commission's Analysis of the Threat of Material Injury:

All three negative-voting commissioners jointly considered the issue of threat of material injury. They did not, in their discretion, cumulate imports from any of the countries, citing a lack of uniform pricing, volume trends, or market penetration and low market shares of imports from many of the subject countries. *Id* at 25. The Commission then considered each of the threat factors set forth in 19 U.S.C. § 1677(7)(F)(i) (1988) for each of the 14 countries and concluded there was no reasonable indication of threat of material injury by reason of alleged LTFV imports from those countries.

Plaintiff claims the Commission abused its discretion in failing to cumulate the imports from all 14 countries in determining the domestic industry was not threatened with material injury. Relying on confidential data, plaintiff argues the record is inadequate to support the Commission's conclusion that there was a "noticeable lack of uniformity of pricing trends among the 14 countries." USITC Pub. 2374 at 25.

The statute provides "[t]o the extent practicable * * * the Commission *may* cumulatively assess" imports in determining whether a domestic industry is threatened with material injury. 19 U.S.C.

§ 1677(7)(F)(iv) (1988)(emphasis added). The court has upheld the Commission's decision not to cumulate imports when it has found there was "great disparity in the patterns of volume increases" and "patterns of underselling, or lack thereof, varied greatly." *See Asociacion Colombiana de Exportadores de Flores v. United States*, 12 CIT 1174, 1178, 704 F. Supp. 1068, 1072 (1988). Plaintiff's arguments address the adequacy of the Commission's investigation. The Commission staff made 478 quarterly price comparisons involving six products. *See* USITC Pub. 2374 at A–64–69. While the Commission may not have compared as many products or made as many comparisons as plaintiff prefers, given the short period of time to conduct a preliminary investigation, the Commission's determination that there was a lack of uniformity in pricing trends was reasonable.

Plaintiff also argues the relationship between affiliated companies militated in favor of cumulation. The Commission, however, reasonably concluded the nature of the related parties' import practices indicated that they did not import principally to benefit from unfair trade practices. USITC Pub. 2374 at 16; *contra Coated Groundwood Paper*, USITC Pub. 23 at 31.

3. Import Volume:

Plaintiff claims the Acting Chairman in her negative determination of material injury and the Commission majority in its negative determination of threat of material injury erred by evaluating the value of imported ball bearings for purposes of cumulation. Plaintiff asserts that the Commission is required to evaluate the *quantity* of imports for cumulation purposes because the cumulation statutes require the Commission to evaluate the *volume* of imports. *See* 19 U.S.C. §§ 1677(7)(C)(iv), (v) & (F)(iv) (1988).

In reviewing an agency's interpretation of a statute, "[i]f the statutory language is clear, then 'that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.'" *Chaparral Steel Co. v. United States*, 8 Fed. Cir. (T) ____, ____, 901 F.2d 1097, 1101 (Fed. Cir. 1990) (quoting *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984)). When the statute is not clear, and the agency has made an interpretation, the court must examine the agency's interpretation as to whether it is "based on a permissible construction of the statute." *Id.* The statutes do not expressly state the Commission must evaluate volume in terms of quantity, 19 U.S.C. §§ 1677(7)(C)(iv), (v) & (F)(iv), and legislative history indicates the Commission should not apply the cumulation provision in a manner that would lead to ridiculous results. H.R. Rep. No. 40, Part 1, 100th Cong., 1st Sess. at 131. Moreover, "[t]he Commission has wide discretion in choosing reasonable analytical methodology." *Metallverken Nederland, B.V. v. United States*, 13 CIT 1013, 1024, 728 F. Supp. 730, 739 (1989).

The record provides the construction of aggregate data regarding the quantity of imports would have been impractical due to variations in

product sizes and weight per unit between complete bearings and parts. USITC Pub. 2374 at A–56. Also, plaintiff itself used value-based data in its petition when comparing the volume of imports to domestic consumption. *See. e.g.*, AR. Doc. 2 at 112 & 113. In addition, the commission has in other determinations used value-based measurements to ascertain import volumes of bearings products. *See. e.g.*, *Antifriction Bearings*, USITC Pub. at 67, 69 & 71; *Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers, from Hungary, the People's Republic of China, and Romania*, Inv. Nos. 731–TA–341, 344–45, USITC Pub. 1983 at 16 (June 1987)(final). Plaintiff's argument that the Commission must analyze the volume of imports in terms of quantity could lead to absurd results in investigations involving industries producing low quantities of high-value merchandise. The Court finds it was reasonable for the Commission to use value-based indices when considering the volume of imports.

CONCLUSION

The Court holds the Commission reasonably determined the record as a whole contained clear and convincing evidence that the domestic industry was not experiencing material injury or threatened with material injury and that there is no likelihood that contrary evidence will arise in a final investigation. The Commission did not abuse its discretion in relying upon questionnaire data in determining the condition of the domestic industry, declining to exclude related parties from its analysis of the condition of the domestic industry and declining to cumulate imports.

This motion having been submitted to the Court, after oral argument, post-argument submissions and due deliberation, it is

ORDERED plaintiff's motion for judgment on upon the agency record is denied, and it is further

ORDERED that this action is dismissed.

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESS
C92/45 4/2/92 Aquilino, J.	E. Gluck Corp.	82–12–01798	716.09–716. 715.05, et Various ra
C92/46 4/2/92 Aquilino, J.	E. Gluck Corp.	83–1–00013	716.09–716. 715.05, et Various ra
C92/47 4/2/92 Aquilino, J.	E. Gluck Corp.	83–1–00025	716.09–716. 715.05, et Various ra
C92/48 4/2/92 Aquilino, J.	E. Gluck Corp.	83–7–01047	716.09–716. 715.05, et Various ra
C92/49 4/2/92 Aquilino, J.	E. Gluck Corp.	83–8–01164	716.09–716. 715.05, et Various ra

FICATION DECISIONS

SED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
.45, tc. rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.
.45, tc. rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.
.45, tc. rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.
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DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	A
C92/50 4/2/92 Aquilino, J.	E. Gluck Corp.	84–1–00051	716 7 V
C92/51 4/2/92 Aquilino, J.	E. Gluck Corp.	84–1–00064	716 7 V
C92/52 4/2/92 Aquilino, J.	E. Gluck Corp.	84–1–00084	716 7 V
C92/53 4/2/92 Aquilino, J.	E. Gluck Corp.	84–1–00095	716 7 V
C92/54 4/2/92 Aquilino, J.	E. Gluck Corp.	84–4–00572	716 7 V

FICATION DECISIONS – Continued

ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
6.09–716.45, 715.05, etc. Various rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.
6.09–716.45, 715.05, etc. Various rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.
6.09–716.45, 715.05, etc. Various rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.
6.09–716.45, 715.05, etc. Various rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.
6.09–716.45, 715.05, etc. Various rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.

C92/55 4/2/92 Aquilino, J.	E. Gluck Corp.	84–5–00604	716.09–71 715.05, Various
C92/56 4/2/92 Aquilino, J.	E. Gluck Corp.	84–6–00762	716.09–71 715.05, Various
C92/57 4/2/92 Aquilino, J.	E. Gluck Corp.	84–6–00823	716.09–71 715.05, Various
C92/58 4/2/92 Aquilino, J.	E. Gluck Corp.	84–10–01404	716.09–71 715.05, Various
C92/59 4/2/92 Aquilino, J.	E. Gluck Corp.	84–11–01623	716.09–71 715.05, Various
C92/60 4/2/92 Aquilino, J.	E. Gluck Corp.	84–11–01624	716.09–71 715.05, Various
C92/61 4/2/92 Aquilino, J.	E. Gluck Corp.	89–8–00467	716.09–71 715.05, Various

716.45, 5, etc. us rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.
716.45, 5, etc. us rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.
716.45, 5, etc. us rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.
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716.45, 5, etc. us rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASS
C92/62 4/2/92 Aquilino, J.	E. Gluck Corp.	90–12–00684	716.09 715. Vari
C92/63 4/2/92 Aquilino, J.	I.D. Enterprises, Inc.	90–4–00189	715.05 + 69

CATION DECISIONS—Continued

SSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
9–716.45, .05, etc. ious rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. *v.* U.S. 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (Fed. Cir. 1982)	New York Quartz analog watches, etc.
5 8c each % or 36c each	688.36 3.9%	Agreed statement of facts	Los Angeles Ladies analog watches

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